

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JIMMY ESTUARDO BOLIVA PINEDA, )  
 ) CASE NO. C13-1672-RSL-MAT  
Petitioner, )  
 )  
v. ) REPORT AND RECOMMENDATION  
 )  
ICE FIELD OFFICE DIRECTOR, )  
 )  
Respondent. )  
\_\_\_\_\_ )

I. INTRODUCTION AND SUMMARY CONCLUSION

Jimmy Estuardo Boliva Pineda (“petitioner”) has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his continued detention and seeking either supervised release or a bond hearing before an Immigration Judge. (Dkt. 1.) Respondent has moved to dismiss, arguing that petitioner failed to exhaust his administrative remedies by requesting a bond redetermination hearing before an Immigration Judge before seeking habeas relief under § 2241. (Dkt. 7.)

For the following reasons, the Court recommends that respondent’s motion to dismiss be GRANTED, and this case be DISMISSED with prejudice.

## 01 II. BACKGROUND AND PROCEDURAL HISTORY

02 Petitioner is a native and citizen of Guatemala who entered the United States without  
03 inspection, admission, or parole by an immigration officer on several occasions. (Dkt. 7,  
04 Attach. 1 at 3, 4, 24.) On or about January 2, 2012, he was apprehended by the Department of  
05 Homeland Security (“DHS”) while attempting to reenter the United States without inspection.  
06 (Dkt. 7, Attach. 1 at 1-3, 24.) Petitioner was convicted of illegal entry and served a four month  
07 sentence. (Dkt. 7, Attach. 1 at 5.) Upon completion of his sentence, petitioner was  
08 transferred back to DHS custody. (Dkt. 7, Attach. 1 at 5.)

09 On April 12, 2013, an Immigration Judge denied petitioner’s application for asylum,  
10 withholding of removal, and relief under the Convention Against Torture, and ordered him  
11 removed to Guatemala. (Dkt. 7, Attach. 1 at 4-23.) Petitioner appealed the Immigration  
12 Judge’s removal order to the Board of Immigration Appeals (“BIA”), which dismissed the  
13 appeal on August 19, 2013. (Dkt. 7, Attach. 1 at 26-27.)

14 While petitioner’s appeal was pending before the BIA, petitioner received a bond  
15 redetermination hearing before an Immigration Judge. (Dkt. 7, Attach. 1 at 28.) On May 23,  
16 2013, the Immigration Judge denied bond, finding both that she had “No Jurisdiction” and that  
17 petitioner was a danger to the community and a flight risk. *Id.* On September 16, 2013,  
18 petitioner filed the instant habeas petition, challenging the lawfulness of his continued  
19 detention and seeking supervised release or a bond hearing before an Immigration Judge.  
20 (Dkt. 1.)

21 On October 3, 2013, petitioner filed a petition for review and a motion for stay in the  
22 Ninth Circuit Court of Appeals. *See Pineda v. Holder*, No. 13-73471 (9th Cir. Oct. 3, 2013).

Pursuant to Ninth Circuit General Order 6.4(c)(1), the filing of the motion for stay of removal triggered an automatic temporary stay. *See id.*, Dkt. 1. On October 7, 2013, the government filed a motion to dismiss the petition for review for lack of jurisdiction and a response opposing petitioner's motion to stay removal. *Id.* at Dkt. 4. On October 24, 2013, the Ninth Circuit granted the government's motion to dismiss the petition for review for lack of jurisdiction, and the mandate issued on February 13, 2014, terminating the temporary stay of removal. *Id.* at Dkts. 6 and 9.

### III. DISCUSSION

Title 8 U.S.C. § 1226 provides the framework for the arrest, detention, and release of aliens in removal proceedings. *See* 8 U.S.C. § 1226. That provision provides the Attorney General with discretionary authority to release an alien on bond or conditional parole pending the completion of removal proceedings, unless the alien falls within one of the categories of criminal aliens described in § 1226(c) for whom detention is mandatory. *See id.*

Once removal proceedings have been completed, the detention and release of aliens shifts to 8 U.S.C. § 1231. Section 1231 states that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." 8 U.S.C. § 1231(a)(1)(A). During the removal period, continued detention is required. 8 U.S.C. § 1231(a)(2). Section 1231(a)(6) provides the Attorney General with discretionary authority to detain certain aliens beyond the removal period, or to release them under an order of supervision. 8 U.S.C. § 1231(a)(6).

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court determined that the government is entitled to a presumptively reasonable period of detention of six months to bring

01 about the alien's removal from the United States. After this six-month period, the alien is  
02 eligible for conditional release upon demonstrating that there is "no significant likelihood of  
03 removal in the reasonably foreseeable future." *Id.*

04 The determination of when an alien becomes subject to detention under Section 1231  
05 rather than Section 1226 is governed by Section 1231(a)(1)(B), which provides:

06 The removal period begins on the latest of the following:

- 07 (i) The date the order of removal becomes administratively final.
- 08 (ii) If the removal order is judicially reviewed and if a court orders a stay of  
09 the removal of the alien, the date of the court's final order.
- 10 (iii) If the alien is detained or confined (except under an immigration process), the  
date the alien is released from detention or confinement.

11 8 U.S.C. § 1231(a)(1)(B).

12 "Where an alien falls within this statutory scheme can affect whether his detention is  
13 mandatory or discretionary, as well as the kind of review process available to him if he wishes  
14 to contest the necessity of his detention." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th  
15 Cir. 2008). "The statutory scheme governing the detention of aliens in removal proceedings is  
16 not static; rather, the Attorney General's authority over an alien's detention shifts as the alien  
17 moves through different phases of administrative and judicial review." *Casas-Castrillon v.*  
18 *Dep't of Homeland Sec.*, 535 F.3d 942, 945 (9th Cir. 2008). As the Ninth Circuit has noted,  
19 "[t]his makes the task of determining where an alien falls within this scheme particularly  
20 difficult for a reviewing court, because the Attorney General's authority over the alien can  
21 present a moving target." *Id.* at 946. Further, the authority over the alien at the time the  
22 habeas corpus petition is filed may differ from the authority at the time a decision is filed. *Id.*

01 On October 24, 2013, while this matter was pending, the Ninth Circuit dismissed the  
02 petition, and the mandate issued on February 13, 2014, terminating the temporary stay of  
03 removal. As a result, petitioner entered the "removal period." *See* 8 U.S.C. §  
04 1231(a)(1)(B)(ii). Accordingly, petitioner's detention is now governed by § 1231(a)(2) and  
05 his detention is required. 8 U.S.C. § 1231(a)(2). The ninety-day removal period will expire  
06 on or about May 14, 2014, and the six month presumptively reasonable period will expire on or  
07 about August 13, 2014. Petitioner's detention is therefore lawful and the court must deny  
08 habeas relief. *See Zadvydas*, 533 U.S. at 701. Should petitioner's detention continue past the  
09 six-month presumptively reasonable period, he may file a new habeas petition and obtain  
10 review. At that time, however, petitioner must provide "good reason to believe that there is no  
11 significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at  
12 701.

#### 13 IV. CONCLUSION

14 For the foregoing reasons, the Court recommends that respondent's motion to dismiss  
15 (Dkt. 7) be GRANTED, and this matter be DISMISSED with prejudice.

16 DATED this 20th day of February, 2014.

17  
18 

19 Mary Alice Theiler  
20 Chief United States Magistrate Judge  
21  
22